

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:)
AREDIA and ZOMETA PRODUCTS)
LIABILITY LITIGATION) NO. 3-06-MD-1760
) JUDGE CAMPBELL
This Document Relates To Case Number:)
03-06-0523 (Tucker/Baber))

ORDER


Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket No.6608), Objections filed by the Plaintiff (Docket No. 6683), and Defendant's Response to Objections (Docket No. 6720).

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(3) and Local Rule 72.03(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections, the Response to Objections and the file. The Objections of the Plaintiff are well-taken, and the Report and Recommendation is rejected.

The basis of the recommendation to dismiss this case is incorrect. Plaintiff was not required, under Fed. R. Civ. P. 25(c), to file another Motion for Substitution when Ms. Baber became Trustee rather than Executor of Ms. Tucker's estate. Rule 25(c) provides that if an interest is transferred, the action may be continued by or against the original party *unless* the court, on motion, orders the transferee to be substituted in the action or joined with the original party. Here, Plaintiff filed a Motion for Substitution when the Court ordered it. Until then, nothing in Rule 25 required that Plaintiff file a motion to substitute Ms. Baber as Trustee for Ms. Baber as Executor.

Accordingly, the Magistrate Judge's Order (Docket No. 6512) is overruled, and Plaintiff's Motion to Substitute (Docket No. 6292) is GRANTED. In addition, Defendant's Motion to Dismiss (Docket No. 6242) is DENIED.

IT IS SO ORDERED.


TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE